UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

SUMMARY ORDER

RULINGS BY SUMMARY ORDER DO NOT HAVE PRECEDENTIAL EFFECT. CITATION TO SUMMARY ORDERS FILED AFTER JANUARY 1, 2007, IS PERMITTED AND IS GOVERNED BY THIS COURT'S LOCAL RULE 32.1 AND FEDERAL RULE OF APPELLATE PROCEDURE 32.1. IN A BRIEF OR OTHER PAPER IN WHICH A LITIGANT CITES A SUMMARY ORDER, IN EACH PARAGRAPH IN WHICH A CITATION APPEARS, AT LEAST ONE CITATION MUST EITHER BE TO THE FEDERAL APPENDIX OR BE ACCOMPANIED BY THE NOTATION: "(SUMMARY ORDER)." A PARTY CITING A SUMMARY ORDER MUST SERVE A COPY OF THAT SUMMARY ORDER TOGETHER WITH THE PAPER IN WHICH THE SUMMARY ORDER IS CITED ON ANY PARTY NOT REPRESENTED BY COUNSEL UNLESS THE SUMMARY ORDER IS AVAILABLE IN AN ELECTRONIC DATABASE WHICH IS PUBLICLY ACCESSIBLE WITHOUT PAYMENT OF FEE (SUCH AS THE DATABASE AVAILABLE AT HTTP://WWW.CA2.USCOURTS.GOV/). IF NO COPY IS SERVED BY REASON OF THE AVAILABILITY OF THE ORDER ON SUCH A DATABASE, THE CITATION MUST INCLUDE REFERENCE TO THAT DATABASE AND THE DOCKET NUMBER OF THE CASE IN WHICH THE ORDER WAS ENTERED.

At a stated Term of the United States Court of Appeals for the Second Circuit, held at the Daniel Patrick Moynihan United States Courthouse, 500 Pearl Street, in the City of New York, on the 16th day of November, two thousand and nine.

Present:

ROSEMARY S. POOLER,
ROBERT A. KATZMANN,
DEBRA ANN LIVINGSTON
Circuit Judges.

(09-0354-cv)

KENYON B. FITZGERALD JR., PETER SCOVILLE WELLS, SIDNEY SILLER, DISABLED AMERICAN VETERANS DEPARTMENT OF NEW YORK, INC.,

Plaintiffs-Appellants,

—v—

WADE F. B. THOMPSON, ELIHU ROSE, ARIE L. KOPELMAN, STEPHEN LASH, EDWARD KLEIN, REBECCA ROBERTSON, KIRSTEN REOCH, CHARLES GARGANO, WILLIAM SHERMAN, CAROL BERGENS, JOHN DOE, MARY ROE, SEVENTH REGIMENT ARMORY CONSERVANCY, INC.,

Defendants-Appellees.

Appearing for Appellants: Whitney North Seymour, Jr. (Gabriel North Seymour, *on the brief)*

Appearing for Appellees: Lewis R. Clayton (Barbara R. Llanes, *on the brief)*, Michael S. Belohlavek, Senior Counsel (Patrick J. Walsh, Assistant Solicitor General of Counsel, *on the brief)*, *on behalf of* Andrew M. Cuomo, Attorney General of the State of New York

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Appeal from the United States District Court for the Southern District of New York (Jones, J).

ON CONSIDERATION WHEREOF, IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that the judgment of said District Court be and it hereby is **AFFIRMED**.

This case relates to a proposed restoration of the Seventh Regiment Armory (the "Armory") located at 643 Park Avenue in Manhattan. Appellants filed a complaint seeking, *inter alia*, declaratory judgment and injunctive relief invalidating a 2004 New York State statute authorizing a 2006 lease of the Armory to the Seventh Regiment Armory Conservancy, Inc. ("Conservancy"). Appellants argued that the statute violated several of their constitutional rights under the First Amendment, the Takings Clause of the Fifth Amendment, and the Due Process and the Equal Protection Clause of the Fourteenth Amendment. On January 5, 2009, Judge Barbara Jones granted defendants' motion to dismiss on the grounds that plaintiffs lacked standing. Appellants now appeal from this judgment. We assume the par-

ties' familiarity with the underlying facts, procedural history, and specification of issues for review.

This Court reviews a district court's dismissal of a complaint under rules 12(b)(1) and (6) *de novo*. *Jaghory v. N.Y. State Dep't of Educ.*, 131 F.3d 326, 329 (2d Cir. 1997). Further, we must accept all factual allegations in the complaint as true and draw inferences in the light most favorable to the appellants. *Id.*

Upon review, we conclude that the district court was correct that appellants did not have Art. III standing. The "irreducible constitutional minimum" of standing has three elements:

> (1) there must be an "'injury in fact,'—an invasion of a legally protected interest which is (a) concrete and particularized, and (b) actual or imminent, not conjectural or hypothetical;" (2) there must be "a causal connection between the injury and the conduct complained of;" and (3) "it must be likely, as opposed to merely speculative, that the injury will be redressed by a favorable decision."

Port Washington Teachers' Ass'n v. Bd. of Ed. of Port Washington, 478 F.3d 494, 498 (2d Cir. 2007) (quoting *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560 (1992)). Appellants have failed to show any injuries in fact.

First, appellants' complaint failed to allege a property interest in the Armory. *U.S. Olympic Comm. v. Intelicense Corp., S.A.*, 737 F.2d 263, 268 (2d Cir. 1984) ("Only the owner of an interest in property at the time of the alleged taking has standing to assert that a taking has occurred."). The complaint con-

tends that, the Armory is privately owned by "the trustees of the Seventh Regiment Armory fund," but fails to allege that appellants are the trustees or the successors of the trustees. Instead, appellants bring this action as veterans (although only Wells is a veteran of the Seventh Regiment specifically), and directors of the 107th Infantry Regiment Historical Society. They allege no official connection between the Seventh Regiment Historical Society, and the Seventh Regiment of the National Guard or its sucessor unit, the 107th Corps Support Group of the New York Armory National Guard. Therefore, Appellants have no standing to bring a takings claim.

Second, Appellants argue they have been denied a free speech right to "tell[ ] stories of the experiences of citizen-soldiers" by installing a military history museum, a free association right to hold Armory meetings with other veterans based on "collegiality and shared experiences," and a statutory right to free access to the Armory. They argue that Chapter 482 (and the Conservancy plans to convert interior spaces into "commercial restaurant, cocktail lounge and banquet and reception facilities") "effectively" denies them free access.

Appellants do not argue that Chapter 482 on its face violates any of appellants' asserted rights, nor did their complaint allege that Chapter 482 has been applied to violate these rights. Chapter 482 changes the access procedure to the Armory only in that appellants must now submit their application for access to a different person. N.Y. Mil. Law. §180-a (3)(c)(i). Appellants did not allege that they have applied for and been denied access. *See Moose Lodge No. 107 v. Irvis*, 407 U.S. 163, 166-67 (1972) (finding plaintiff lacked standing to challenge

racially discriminatory membership policy because he had never applied for membership). At present, any injury is hypothetical.

Any injury from failure to install a museum is similarly hypothetical because appellants did not allege that they have applied for and been denied access to use the Armory for a museum. Even if appellants were denied, they have not asserted a right to build a museum in the Armory. While the Armory may be, as appellants assert, a natural choice for the museum, the Historical Society Charter to build a museum does not state where the museum will be located, and makes no mention at all of the Armory. Thus, appellants have not shown any right to install a museum in the Armory.

The Equal Protection Claim fails for the same reasons: Chapter 482 does not deny appellants access to the Armory on its face, nor did they allege that they have been denied access in fact. Appellants have not alleged that they have been treated differently than any other group.

Accordingly, the judgment of the district court hereby is AFFIRMED.

FOR THE COURT:
Catherine O'Hagan Wolfe, Clerk

By: _____

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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07 CV 6851 (BSJ)

KENYON B. FITZGERALD, JR., PETER SCOVILLE WELLS, SIDNEY SILLER, and DISABLED AMERICAN VETERANS DEPARTMENT OF NEW YORK, INC.,

Plaintiffs,

—v—

WADE F.B. THOMPSON, ELIHU ROSE, ARIE L. KOPELMAN, STEPHEN LASH, EDWARD KLEIN, REBECCA ROBERTSON, KIRSTEN REOCH, CHARLES GARGANO, WILLIAM SHERMAN, CAROL BERGENS, JOHN DOE, MARY ROE and SEVENTH ARMORY CONSERVANCY, INC.,

Defendants.

OPINION & ORDER

BARBARA S. JONES
UNITED STATES DISTRICT JUDGE

This action relates to the proposed restoration and renovation of the historic Seventh Regiment Armory (the "Armory") located at 643 Park Avenue in Manhattan. Plaintiffs Kenyon B. Fitzgerald, Jr. ("Fitzgerald"), Peter Scoville Wells ("Wells"), Sidney

Siller ("Siller") and the Disabled American Veterans Department of New York, Inc. (collectively, "Plaintiffs") seek declaratory and injunctive relief invalidating the New York statute authorizing a lease of the Armory to the Seventh Regiment Armory Conservancy (the "Conservancy"). Plaintiffs assert that the enactment and implementation of this statute violates certain provisions of the Constitution of the United States and several of the Plaintiffs' rights under state common law. In response, Defendants Carol Berens and William Sherman ("State Defendants"), and Defendants Wade F.B. Thompson, Elihu Rose, Arie L. Kopelman, Stephen Lash, Rebecca Robertson, Kirsten Reoch, and the Conservancy (the "Conservancy Defendants") (collectively, the "Defendants"), each move to dismiss Plaintiffs' Complaint, pursuant to Federal Rules of Civil Procedure 12(b)(1), 12(b)(5), and 12(b)(6). For the reasons that follow, the Court GRANTS their motions.

BACKGROUND[1]

Plaintiffs Fitzgerald and Wells are veterans of the Armed Forces of the United States purporting to

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[1] The following factual allegations are taken from the Complaint and the exhibits attached thereto. The Court does not consider the exhibits and affidavits filed by Defendants unless otherwise noted. In determining a motion to dismiss, the Court's review is generally limited to the Complaint, as well as any documents incorporated by reference therein. *See U.S. ex. rel. Ellis v. Sheikh*, No. 05-CV-6146L, 2008 WL 4761875, at *2 (W.D.N.Y. Oct. 31, 2008); *but see Papasan v. Allain*, 478 U.S. 265, 269 (1986) ("[A]lthough this case comes to us on a motion to dismiss under Federal Rule of Civil Procedure 12(b), we are not precluded in our review of the complaint from taking notice of items in the public record.").

represent a class of Seventh Regiment veterans. (Compl. ¶¶ 3-4.) Fitzgerald and Wells are also officers of the 107th Infantry Regiment Historical Society (the "Historical Society") (Compl. ¶¶ 3-4.), an organization granted a charter by the New York State Education Department in 1964 to collect memorabilia from the Seventh Regiment and establish a museum of such memorabilia (Compl. ¶ 41). Plaintiff Siller is the Department Adjutant for the Disabled American Veterans Department of New York, Inc. (Compl. ¶ 5), a veteran's organization granted use of the armories in New York (Compl. ¶ 6). Siller is himself a veteran, although not of the Seventh Regiment. (Compl. ¶ 5.)

Built in the 1870s for the Seventh Regiment—which traces its provenance to a militia battalion formed in 1824 as the "National Guard"—the Armory is a National Historic Landmark. (Compl. ¶¶ 12-13.) In an 1873 statute, the New York State legislature directed the City to lease to field officers of the Seventh Regiment, and their successors in office, a plot of ground belonging to the City for "the public purposes of said regiment." (Compl. ¶ 16.) The field officers of the Seventh Regiment were authorized and empowered to accept the lease and the site on behalf of the Regiment to be thereafter "exclusively used for an armory and drill rooms by the Regiment." (Compl. ¶ 16.) On September 23, 1874, pursuant to further State legislation enacted that year, the City and the field officers entered into such a lease (the "1874 lease"). (Compl. ¶ 18.) The terms of the lease were extended on April 23, 1879 (the "1879 lease") "for and during the period the regiment shall exist and act as a military organization, and desire

to occupy said armory for its lawful purposes." (Compl. ¶ 19.)

Under a law also passed in 1879, the New York State legislature authorized the board of officers of the Seventh Regiment to issue bonds in the name of the Regiment to complete construction of the Armory building. (Compl. ¶ 21.) In order to secure payment of the bonds, the legislature authorized the board of officers to convey the leased property and the Armory to "the trustees of the Seventh Regiment Armory fund" and their successors "in trust." (Compl. ¶ 21.) The bonds, issued and sold in 1879, were redeemed from private monies raised from donations and several private groups affiliated with members of the Regiment. (Compl. ¶ 21-22.) No State funds were used in erecting the Armory. (Compl. ¶ 23.)

By a statute passed in 1893, the field officers of the Seventh Regiment were designated as Trustees of the Armory ("Trustees"). (Compl. ¶ 24.) The Trustees are responsible for holding the Armory solely and exclusively for the public purposes of the Regiment. They are also charged with the duty of maintaining and improving the Armory. (Compl. ¶ 24, Ex. C.) In recent years, however, the Armory has fallen into a state of disrepair. (Compl. ¶ 35.)

In or about July 2000, without consent or approval of the Trustees, the Empire State Development Corporation ("ESDC") and the State Division of Military and Naval Affairs ("DMNA") issued a Request for Proposals ("RFP"), purporting to seek a developer for the reuse of the Armory. (Compl. ¶ 36.) The RFP purported to offer the Armory a lease to such developer, "without regard to the terms of the City's lease or the ownership rights of the Regiment." (Compl.

¶ 36.) In response to the RFP, the Conservancy, a not-for-profit corporation organized under the laws of the State of New York (Compl. ¶ 10), submitted its bid for restoration of the Armory (Compl. ¶ 37). On September 9, 2001, ESDC issued a letter designating the Conservancy the "Preferred Proposer" for the restoration of the Armory. (Compl. ¶ 37.)

In order to implement the Conservancy's plan, in August of 2004, the New York State Legislature enacted Chapter 482 of the Laws of 2004 ("Chapter 482"). (Compl. ¶ 38.) Chapter 482 amended the Military Law of the State of New York and the New York State Urban Development Act. (Compl. ¶ 38.) Chapter 482 provides, in short, for (1) the lease of the Armory to the Conservancy for 99 years; (2) the restoration and preservation of the Armory building; (3) the use of the Armory for civic and cultural events; (4) the continued military character of the Armory; and (5) the continued presence of the women's shelter on the premises. (Compl. ¶ 38, Ex. D.)

Based upon the foregoing facts, the Complaint asserts the following causes of action. Claim One asserts a violation of the Due Process Clause of the Fourteenth Amendment of the United States Constitution on the ground that Chapter 482 constitutes a taking of both the Seventh Regiment's property, the Armory's property, and Plaintiffs' right of access to the Armory. (Compl. ¶¶ 70-72.) Claim Two asserts a violation of the Public Use Clause of the Fifth Amendment of the Constitution on the ground that the lease of the Armory to the Conservancy is an improper transfer of the Seventh Regiment's property for the benefit of a known private party, and that the stated public purpose of Chapter 482 is

incidental to the private benefits that will be conferred upon the Conservancy. (Compl. ¶¶ 74-77.) Claim Three asserts a violation of the Contracts Clause of the Fifth Amendment of the Constitution on the ground that Chapter 482 did not establish any public purpose to justify cancellation of the City's 1874 and 1879 leases of Armory property to the Regiment and its successor units. (Compl. ¶¶ 79-80.) Claim Four asserts a violation of section 10 of the New York State Urban Development Corporation Act (the "UDCA"), which requires the ESDC to make a finding of need for a civic project in the area in which the project is to be located. (Compl. ¶¶ 82-91.) Claim Five asserts that Defendants tortiously interfered with the City's 1874 and 1879 leases through "bid rigging, illegal favoritism and fraud." (Compl. ¶¶ 92-93.) Claim Six asserts a claim for imposition of a constructive trust and accounting of all funds received by the Conservancy. (Compl. ¶¶ 95-99.) Finally, Claim Seven asserts violations of 42 U.S.C. § 1983 on the ground that Defendants deprived Plaintiffs of their constitutionally protected statutory and contractual rights, their rights to expression, their right of assembly and statutory right of access to the Armory, and their due process and equal protection rights under the Fourteenth Amendment of the Constitution. (Compl. ¶¶ 101-04.)

DISCUSSION

I. Defendants' Challenges

Defendants seek to dismiss Plaintiffs' Complaint on the grounds that (1) Plaintiffs lack standing to maintain this action; (2) this Court lacks personal jurisdiction over several individual Defendants:

(3) the Complaint fails to state a claim under either the Public Use or Contract Clauses of the Fifth Amendment of the Constitution; (4) a violation of the UDCA is a state claim that this Court does not have jurisdiction to adjudicate; (5) the Complaint fails to state a claim for tortious interference of a contract under New York law; (6) the Complaint fails to state a claim for constructive trust; and (7) there is no independent cause of action alleged under 42 U.S.C. § 1983.[2] For the reasons that follow, the Court GRANTS Defendants' motions to dismiss the Complaint in its entirety.

II. Standing

Article III standing is properly challenged through a motion to dismiss under Rule 12(b)(1). *Alliance for Envtl. Renewal, Inc. v. Pyramid Crossgates Co.*, 436 F.3d 82, 88 n.6 (2d Cir. 2006). A district court must generally establish that a plaintiff has Article III standing first, before deciding a case on the merits, such as on a Rule 12(b)(6) motion to dismiss. *See id.* at 85 (citing *Steel Co. v. Citizens for a Better Env't*, 523 U.S. 83, 101 (1998)). Standing is challenged on the basis of the pleadings, and thus the Court accepts as true "all material allegations of the complaint, and must construe the complaint in favor of the complaining party." *Bldg. & Constr. Trades Council v. Downtown Dev., Inc.*, 448 F.3d 138, 144 (2d Cir. 2006).

The doctrine of standing is well established to require that the party who wishes to bring suit must

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[2] The State Defendants and the Conservancy Defendants set forth almost identical arguments in support of their motions to dismiss. Unless otherwise noted, the Court discusses both sets of challenges jointly.

have suffered an injury to a legally protected right, an "injury in fact." *Warth v. Seldin*, 422 U.S. 490, 95 (1975); *Baker v. Carr*, 369 U.S. 186 (1962). "An injury-in-fact must be 'distinct and palpable,' as opposed to 'abstract,' and the harm must be 'actual or imminent,' not 'conjectural or hypothetical.' " *Denney v. Deutsche Bank AG*, 443 F.3d 253, 264 (2d Cir. 2006) (citing *Whitmore v. Arkansas*, 495 U.S. 149, 155-56 (1990)). Here, Plaintiffs claim that they have Article III standing on the basis of the Fourteenth Amendment to the United States Constitution. (Pls.' Opp'n Mem. to Defs.' Mots. Dismiss ("Pls.' Opp'n"), at 6.) According to Plaintiffs, their "standing to bring this action, and to seek relief under each of the seven claims alleged in the complaint," is rooted in the Due Process Clause, the Equal Protection Clause, the Privileges and Immunities Clause, and their substantive due process rights. (Pls.' Opp'n at 6-12.) The injuries-in-fact Plaintiffs identify in their Complaint include the denial of access, control, and use of the Armory for traditional military and related purposes; the prevention of the establishment and operation of a military history museum and interpretive program in the Armory's historic spaces for public education; the denial to veterans organization members of the right of free use of the Armory for meetings and gatherings; and the deprivation to City and State taxpayers of support for publicly-funded cultural institutions by diverting audience and donor revenues to the Conservancy and its favored organizations. (Compl. ¶¶ 69(a)-(d).)

A. *Due Process*

Turning first to Plaintiffs' contention that they have standing to bring this action under the Due Process Clause, the Court holds that Plaintiffs have no constitutionally protected right in the Armory sufficient to confer standing. Plaintiffs have not been deprived of a life interest: "lifetime respect, honor, gratitude and compassion" are not judicially cognizable rights. (Pls.' Opp'n at 7.) Likewise, Plaintiffs have failed to demonstrate precisely how or in what manner their liberty interests have been violated.

Plaintiffs allege that they have a liberty right under the First Amendment to express and associate with other veterans. (Pls.' Opp'n at 7.) Yet, the Court sees no evidence of an obstruction by Defendants of the rights of Plaintiffs to express their opinions freely or to associate with one another. The factual predicate as presented to the Court on this point consists of an inability to "tell the stories of [Plaintiffs] military service, and advocate and install a military history museum in the Armory." (Pls.' Opp'n at 7) Although the Conservancy's charter does not permit it to operate a museum (Compl. ¶¶ 42, 50, 69), the Historical Society's charter does not mention the Armory and does not mandate that any museum of the Seventh Regiment's memorabilia be located therein (Compl. ¶ 41). Thus, Plaintiffs have failed to allege a palpable injury on this ground.

Furthermore, by the express terms of Chapter 482, veterans' groups may have access to the Armory on application to the Conservancy. Chapter 482 amended section 183 of the New York Military Law, which provided that veterans' groups could have access to the Armory on application to the officer in charge of

the Armory. Chapter 482 merely shifted the responsibility of granting access to the Armory from the officer in charge of the Armory to the lessee of the Armory, the Conservancy. (Conservancy Defs.' Mem. at 21.) The Complaint does not allege that the Conservancy has taken any steps affirmatively to restrict applications by veterans groups. The Complaint also does not allege that Plaintiffs have made any such application to access the Armory. Accordingly, Plaintiffs are unable to demonstrate more than an injury that is merely speculative.[3] Cf. *Laird v. Tatum*, 408 U.S. 1, 13-14 (1972) (holding that the mere knowledge that the army was surveilling civilian political activity and the fear of detriment if information thus gained were distributed was not sufficient injury to the plaintiffs' First Amendment rights because there was no allegation of specific objective harm, either present or future); *Women's Emergency Network v. Bush*, 323 F.3d 937, 946-47 (11th Cir. 2003) (holding that plaintiffs failed to allege that their First Amendment rights had been violated by a specialty license plate law when the State had not rejected plaintiffs' license plate application).

Plaintiffs also assert that Fitzgerald and Wells have a property interest in the Armory as veterans

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[3] Plaintiffs' additional assertion that they have a constitutional right to petition the courts for redress of their grievances fails because no such allegation is contained in their Complaint. Plaintiffs may not use their opposition papers to amend the Complaint by including a new cause of action. *See Shah v. Helen Hayes Hosp.*, No. 06-4068-CV, 2007 U.S. App. LEXIS 25323, at *4 (2d Cir. Oct. 29, 2007) ("A party may not use his or her opposition to a dispositive motion as a means to amend the complaint.") (citing *Wright v. Ernst & Young LLP*, 152 F.3d 169, 178 (2d Cir. 1998)).

of the Seventh Regiment and as representatives of its successor organizations, including its Historical Society. (Pls.' pp'n at 7.) As an initial matter, the language of Section 1 of Chapter 482 provides a history of the 1874 lease that confirms that the Armory is State property:

> It is also found and declared that leasehold title to the seventh regiment armory *is the property of the state* under an indenture of lease made on September 23, 1874 between the "mayor, aldermen and commonality of the city of New York" as lessors, and the "field officers of the seventh regiment of the national guard of the state of New York," as lessees, which field officers were later redesignated as the trustees of the seventh regiment armory building . . . , as amended by an indenture of lease dated April 23, 1879.

(Compl., Ex. D. (2004 N.Y. Laws Ch. 482 § 1) (emphasis added)); *see also Dalva v. Pataki*, No. 116965/05, Slip Op. at 15 (N.Y. Sup. Ct. Mar. 3, 2006) ("The State defendants' argument convinces me that the State is, indeed, the lessee of the Armory, and may, therefore, claim the rights of a lessee."). Even if the Armory were the property of the Seventh Regiment, however, Fitzgerald and Wells, as veterans, are *not* representatives of the Regiment and thus have no property interest in the Armory. *Veterans of Seventh Regiment v. Field Officers of Seventh Regiment, et al.*, 14 N.Y.S. 811, 815 (N.Y. App. Div. 1891) ("[V]eterans of the seventh regiment . . . are not members of said regiment, and the delegation of power to the field officers of said regiment to exclusively hold

and use the property leased for an armory and drill rooms by said regiment would ordinarily and naturally exclude the idea of a joint adventure with other parties.").

Further, there is no support for Plaintiffs' claim that the 107th Infantry Regiment Historical Society is a successor organization of the Seventh Regiment. (Pls.' Opp'n at 7.) Plaintiffs have not alleged any official connection between the Seventh Regiment and the Historical Society, which is described in the Complaint as a private organization founded in 1964. (Compl. ¶ 41.) Indeed, the record evinces that the actual successor organization to the Seventh Regiment is the 107th Corps Support Group. (Compl., Ex. D (2004 N.Y. Laws Ch. 482 § 1) ("The 107th corps support group, a division of the New York state national guard, is recognized by the department of the army and the courts of the state of New York as the lineal descendent of the seventh regiment . . . .").) Plaintiffs therefore have not asserted "such a personal stake in the outcome of the controversy as to assure that concrete adverseness which sharpens the presentation of issues upon which the court so largely depends for illumination of difficult constitutional questions." *Baker*, 369 U.S. at 204.

In this same regard, even if Plaintiffs had standing to assert that Chapter 482 and the Conservancy lease violate the Contracts Clause of the Fifth Amendment, it is axiomatic that the Contracts Clause—which provides in pertinent part that "No State shall . . . pass any . . . Law impairing the obligation of Contracts," U.S. Const. art. I, § 10—is inapplicable to the relationships between states and their municipalities. *Trenton v. New Jersey*, 262 U.S. 182, 188 (1923) ("The power of the State, unre-

strained by the contract clause . . . over the rights and property of cities held and used for "governmental purposes" cannot be questioned."). Moreover, a "city cannot possess a contract with the State which may not be changed or regulated by state legislation." *Id.* (citing *Town of E. Hartford v. Hartford Bridge Co.*, 51 U.S. 511 (1851)); *see also New York v. Richardson*, 473 F.2d 923, 929 (2d Cir. 1973) ("[P]olitical subdivisions of a state may not challenge the validity of a state statute under the Fourteenth Amendment"). Applying these principles, Plaintiffs' claim alleging that Chapter 482 impaired a contract between officers of the City of New York and officers of the State National Guard cannot withstand scrutiny.

B. *Equal Protection Clause*

Although Plaintiffs do not specifically allege equal protection of the laws as a cause of action, Plaintiffs state within their 42 U.S.C. § 1983 claim that, operating under color of state law, Defendants deprived them of "their due process and *equal protection* rights under the Fourteenth Amendment." (Compl. ¶ 102 (emphasis added).) The Court finds this sufficient to put Defendants on notice of an equal protection claim. Plaintiffs' equal protection argument, however, fails.

"Although a plaintiff need not suffer an injury in fact to have standing to assert an Equal Protection Clause claim, because standing is created by the denial of equal treatment resulting from the imposition of a barrier, not the ultimate inability to obtain the benefit, a plaintiff must nonetheless demonstrate that he was able and ready to apply for a disputed program in order to establish standing."

Filozof v. Monroe Comm. College, No. 04-CV6545L, 2008 WL 4737400, at *9 (W.D.N.Y. Oct. 28, 2008) (citing *Gratz v. Bollinger*, 539 U.S. 244, 262 (2003)). As applicable here, Plaintiffs have failed to show that they were "able and ready" to apply to the ESDC's request for proposals to restore and renovate the Armory. Although Plaintiffs assert that they were prevented from doing so because the Conservancy, not they, received a monetary grant for proposed restoration and renovation, this does not state an equal protection violation. (Pls.' Opp'n at 26.) The Conservancy received the funds because their proposal was selected by ESDC. Furthermore, Plaintiffs have not alleged that they attempted to apply, or would have applied, for access to the Armory but for the proposed enactment of Chapter 482. *See Clements v. Fashing*, 457 U.S. 957 (1982) (noting that plaintiff's standing to challenge a program on Equal protection grounds is not vitiated by plaintiff's failure to attempt participation, if it is alleged that the plaintiff would have done so, had he not been barred by the challenged policy). Thus, Plaintiffs lack standing to challenge Chapter 482 upon the facts alleged.

C. *Privileges and Immunities Clause*

Plaintiffs maintain that they have standing to bring this action based upon the Privileges and Immunities Clause of the Fourteenth Amendment. (Pls.' Opp'n at 8-10.) This cause of action is not alleged in Plaintiffs' Complaint and therefore Plaintiffs may not raise the issue for the first time in their opposition papers. *Shah*, 2007 U.S. App. LEXIS 25323, at *4. Even were the Court to consider Plaintiffs' claim, it is without merit. Contrary to Plaintiffs'

assertions, veterans do not necessarily enjoy special privileges under the Privileges and Immunities Clause. *See Carrabus v. Schneider*, 119 F. Supp. 2d 221, 230 (E.D.N.Y. 2000) (veterans' preferences in county employment created by State law were not essential attributes of national citizenship, and thus did not merit protection under the Fourteenth Amendment Privileges and Immunities Clause).

D. *Substantive Due Process*

Plaintiffs principally argue that their substantive due process rights have been violated by the improper transfer of private property from the Armory Trustees to the Conservancy, in violation of the Takings Clause of the Fifth Amendment. (Pls.' Opp'n at 14-15.) The Takings Clause provides that "private property [shall not] be taken for public use without just compensation." U.S. Const. amend. V. This language has long been understood to guarantee that "one person's property may not be taken for the benefit of another private person without a justifying public purpose, even though compensation be paid." *Thompson v. Consol. Gas Utils. Corp.*, 300 U.S. 55, 80 (1937); *see also Hawaii Hous. Auth. v. Midkiff*, 467 U.S. 229, 245 (1984). The Fifth Amendment's prohibitions are applicable to the states through the Fourteenth Amendment. *Phillips v. Washington Legal Found.*, 524 U.S. 156, 163-64 (1998); *Webb's Fabulous Pharmacies, Inc. v. Beckwith*, 449 U.S. 155, 160 (1980).

Although Plaintiffs do not allege an outright usurpation of their private property, similar to takings claims premised on land use restrictions, the crux of Plaintiffs' claim is that the enactment of Chapter 482 and the authorization of the Conser-

vancy lease are inconsistent with the physical property and use rights they claim. *Seventh Regiment Fund v. Pataki*, 179 F. Supp. 2d 356, 36162 (S.D.N.Y. 2002). As explained *supra*, however, Plaintiffs do not have a property interest in the Armory. The Armory is owned by the State, and, assuming that Plaintiffs have a limited statutory right of access to the Armory upon application, Plaintiffs have not alleged that they have applied for and been denied access to the Armory. Moreover, although veterans and Seventh Regiment members donated funds for the building of the Armory in the 1870s, those donations did not create a property interest in the Armory itself. *Veterans of Seventh Regiment*, 14 N.Y.S. at 816. Because only those with cognizable property interests have standing to bring takings claims, Plaintiffs lack standing to raise the alleged substantive due process claim. *U.S. Olympic Comm. v. Intelicense Corp., S.A.*, 737 F.2d 263, 268 (2d Cir. 1984) ("Only the owner of an interest in property at the time of the alleged taking has standing to assert that a taking has occurred.").

E. *Other Possible Grounds for Standing*

The Complaint includes two other allegations relevant to the standing inquiry: (1) Plaintiff Wells is a New York State and City "taxpayer" (Compl. ¶¶ 3-5); and (2) Plaintiffs were denied access and use of the Armory's rental proceeds, giving rise to an action for tortious interference with contract and the imposition of a constructive trust (Compl. ¶¶ 92, 95-99).

The Complaint alleges that Wells is a New York State and City "taxpayer" (Compl. ¶¶ 3-5), and attacks Chapter 482 for "[d]epriving City and State taxpayers of support for publicly-funded cultural

institutions by diverting audience and donor revenues to the Conservancy and its favored private charities and arts organizations" (Compl. ¶ 69(d)). This claim would perhaps have merit if pleaded as a "taxpayer action," which is a procedural vehicle afforded by New York State Finance Law § 123-b with respect to State action, and by New York General Municipal Law § 51 with respect to municipal action. Given that neither procedural vehicle is mentioned in the Complaint, nor is such a common-law cause of action included among the seven claims in the Complaint, Plaintiff Wells has no standing to challenge Chapter 482 or the Conservancy's lease as a New York State or City taxpayer. *See Daimler-Chrysler Corp. v. Cuno*, 547 U.S. 332, 345 (2006) (plaintiffs lacked standing to challenge a tax break granted by state and local officials because their interests as taxpayers "in the moneys of the [government] treasury are too indeterminable, remote, uncertain and indirect to support standing").

Plaintiffs' tortious interference claim fares no better. (Compl. ¶ 92.) This claim alleges that "Defendants' wrongful actions caused injury and damages to plaintiffs by denying them access and use of the Armory and its rental proceeds." (Compl. ¶ 92.) The Armory's rental proceeds, however, never accrued to Plaintiffs. Before the enactment of Chapter 482, the rental proceeds went to DMNA headquarters, with half the funds paid as rent to the State Treasury and the other half distributed among the units of the organized militia located within the state. N.Y. Military Law § 183(5). After the enactment of Chapter 482, the lessee (in this case, the Conservancy)

> shall be required to apply all revenues generated by operations at the Armory to pay

> or provide for the costs of repairs, restoration, refurbishment, operating, maintenance and programming of the Armory and the uses therein and the activities of the lessee or subsequent lessee with respect thereto.

(Compl., Ex. D (2004 N.Y. Laws Ch. 482 § 3).) Because Plaintiffs have never been entitled to any portion of the Armory's rental revenues, they cannot establish that they personally have suffered some actual or threatened injury as a result of the putatively illegal conduct of Defendants. *Alliance for Envtl. Renewal, Inc.*, 436 F.3d at 85. Accordingly, Plaintiffs lack standing to maintain an action for tortious interference of contract, or for the imposition of a constructive trust and a concomitant accounting, on the basis of denied rental revenues.

F. *State Law Violation*

Even assuming Plaintiffs had standing, their claim that the Conservancy lease should be voided for "fraud and failure to comply with the [New York State Urban Development Act] in material respects" is not properly before this Court. (Compl. ¶ 91.) Under New York law, when a plaintiff seeks to assert that a determination of a governmental body or public official is "in violation of lawful procedure, was affected by an error of law or was arbitrary and capricious or an abuse of discretion" and seeks nullification of such action, an Article 78 proceeding is the appropriate vehicle to address the claim. *Abiele Contracting, Inc. v. N.Y. City Sch. Constr. Auth.*, 666 N.Y.S.2d 970, 972-73 (N.Y. 1997). New York law, however, vests jurisdiction over Article 78 proceedings solely in state courts. N.Y.C.P.L.R.

§ 7804(b) ("A proceeding under this article shall be brought in the supreme court in the county specified [by statute]."). District courts sitting in New York have refused to impinge upon this exclusive jurisdiction. *See, e.g.*, *Blatch v. Hernandez*, 360 F. Supp. 2d 595, 637 (S.D.N.Y. 2005) ("This [Article 78] claim must be dismissed for lack of subject matter jurisdiction, as New York State has not empowered the federal courts to consider such claims."). Accordingly, the Court concludes that it lacks jurisdiction to consider Plaintiffs' UDCA claim.

CONCLUSION

For the reasons stated above, Defendants' motion to dismiss the Complaint in its entirety is GRANTED. The Clerk of the Court is directed to close the case.

SO ORDERED:

/s/ BARBARA S. JONES
BARBARA S. JONES
UNITED STATES DISTRICT JUDGE

Dated: New York, New York
January 5, 2008

LEASES—CORPORATIONS—
SEVENTH REGIMENT ARMORY

CHAPTER 482

A. 11817

Approved and effective September 21, 2004

AN ACT to amend the military law and the New York state urban development corporation act, in relation to a lease of the seventh regiment armory to a not-for-profit corporation

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Additions are indicated by underline; deletions by ~~strikeout~~; vetoes by shading

§ 1. Statement of legislative findings and purposes. It is hereby found and declared that New York state's Seventh Regiment Armory, located in the city of New York, is an important historic landmark; that it has been a prominent center of cultural and civic events since its construction in 1879; that it is of great military historic value; that the continued ability to operate the seventh regiment armory for military purposes in times of civil or military emergency is vitally important to the city and state, and that the physical restoration and refurbishment of the armory is necessary and important to preserve this structure for current and future generations of New Yorkers.

It is further found and declared that the armory is an important civic and cultural facility for the community in which it is located and for the residents of

the city and state; and that the continued use of the armory for cultural events and other civic uses is beneficial to the health, safety, welfare, and education of the people of the city and the state, and is consistent with the armory's purpose as a military facility.

It is further found and declared that a portion of the armory has been successfully utilized for a range of activities, including use as a shelter for homeless women that has been operated by the city of New York and that continued use of a portion of the armory as a shelter for homeless women is beneficial to the health, safety, welfare and education of the people of the city and state, and is consistent with the armory's purpose as a military facility and is contemplated pursuant to this legislation.

It is further found and declared that the armory has suffered deterioration in its physical infrastructure and plant in recent decades and that the continued deterioration of the facility must be remedied and reversed; that the renovation of the armory will require the investment of many millions of dollars and that financial circumstances make such public expenditures very difficult.

It is further found and declared that the restoration and renovation of the armory is in the public interest and that a partnership between the state and the private sector is necessary to undertake the financing of the restoration and future operation of this historic structure; that the division of military and naval affairs and the urban development corporation issued a request for proposals from interested private sector organizations in the year 2000 to undertake the restoration and operation of the

armory. A not-for-profit organization, the seventh regiment armory conservancy, was named as chosen developer and deemed to fulfill all financial, organizational and operational requirements to undertake this endeavor in partnership with the state.

It is further found and declared that leasehold title to the seventh regiment armory is the property of the state under an indenture of lease made on September 23, 1874 between "the mayor, alderman and commonality of the city of New York," as lessors, and "the field officers of the seventh regiment of the national guard of the state of New York," as lessees, which field officers were later redesignated as the trustees of the seventh regiment armory building (Chapter 518 of the Laws of 1893), as amended by an indenture of lease dated April 23, 1879. The 107th corps support group, a division of the New York state national guard, is recognized by the department of the army and the courts of the state of New York as the lineal descendent of the seventh regiment, and the field officers of the 107th corps support group are recognized as the current trustees of the armory and successors in interest to the lessee under the above-cited leases, subject to the supervision of the New York state division of military and naval affairs. Pursuant to this act, the armory is under the general charge and control of the adjutant general, the commanding general and senior military officer of the New York state national guard.

Therefore, it is hereby found and declared that it is in the public interest for the state, acting through the division of military and naval affairs by the authority of the adjutant general, to enter into a public/private partnership with a not-for-profit cor-

poration dedicated to the preservation of the armory as a historical, civic and cultural facility for the community to undertake the renovation and operation of the armory and to exercise the rights and powers herein authorized. Furthermore, such lease and all development-related activities, as well as any subsequent leases or development-related activities, shall be administered by the empire state development corporation on behalf of the division of military and naval affairs and the state.

§ 2. The military law is amended by adding a new section 180-a to read as follows:

§ 180-a. Lease and operation of seventh regiment armory

1. Definitions. (a) "Adjutant general" shall mean adjutant general of the state of New York.

(b) "Armory" shall mean the seventh regiment armory located at 101-129 East 66th street, 100-126 East 67th street, 888-898 Lexington avenue and 641-649 Park avenue, in the county of New York, state of New York and identified as Block 1401, Lot 1 on the tax map of in the city of New York bounded by Park and Lexington avenues and Sixty-sixth and Sixty-seventh streets.

(c) "City lease" shall mean collectively, the leases dated September 23, 1874 and April 23, 1879 by and between the mayor, aldermen and commonality of the city of New York to the field officers of the seventh regiment.

(d) "Division" shall mean the state division of military and naval affairs, established by article nine of the executive law.

(e) "Lease" shall mean a lease for a term of up to ninety-nine years to be entered into between the state, acting through the urban development corporation, as lessor, and the lessee, as tenant, leasing the armory or portions thereof.

(f) "Lessee" shall mean the tenant, a not-for-profit corporation dedicated to the preservation of the armory as a historical, civic and cultural facility for the community, which is party to a lease with the state, acting through the urban development corporation as landlord, leasing the armory or portions thereof.

(g) "Management agreement" shall mean an agreement to be entered into by the state, acting through the urban development corporation, providing for the management of the armory on a short-term basis on behalf of the state as part of the routine or continuing administration and management of the armory.

(h) "Military use" shall mean during periods which are not periods of civil or military emergency, use of a portion of the armory containing approximately twenty-one hundred square feet, or such lesser area as the division may determine, located in the portion of the armory which is not a designated New York city landmark (i.e., not in the historic rooms located on the first and second floors or the drill hall), for offices or administrative functions of the division, and use by the division during any periods of civil or military emergency.

(i) "Periods of civil or military emergency" shall mean any period during which an order of the adju-

tant general directing a response to a civil or military emergency is in effect. Said order shall have effect in relation to this section only in the event of an order by the adjutant general specifically asserting control of areas within the armory.

(j) "Shelter use" shall mean use during periods which are not periods of civil or military emergency, the city of New York shall have the right to access and use sufficient and suitable space for the current and uninterrupted operation of the shelter by the city of New York, as well as usual and customary building services and utilities, including but not limited to heat, water and electric, for use as a shelter for homeless persons.

(k) "Urban development corporation" shall mean the New York state urban development corporation, a public benefit corporation of the state, doing business as the empire state development corporation.

2. State ownership of facility and fixtures. (a) The state, acting through the division, is and shall be recognized as and declared to be the lawful successor to the interest of the lessee under the city lease. No other person or party, whether through claims or entitlements of past or continuing use, occupancy, improvement or otherwise, is or shall be recognized as having any lawful rights in respect of the armory other than as may be expressly granted by, and subject to, the applicable subdivisions of section one hundred eighty-three of this article.

(b) All improvements, betterments, fixtures, equipment, ornaments, decorative elements, and similar items affixed or attached to the armory

building (i.e., all items other than moveable personal property which is not affixed to the walls or other parts of the building) are hereby recognized and declared to be an integral part of the armory and property of the state, and any and all persons who have heretofore installed or paid for the installation of any of the foregoing items are deemed to have donated such items to the state as of the time of the installation of such items in the armory.

3. Lease and operation of armory; certain provisions of this chapter not applicable. (a) Except with respect to expenditures made by the state or the division in connection with military use or the operation of the armory during a period of civil or military emergency, the following provisions of this article shall not apply to the repair, restoration, refurbishment or operation of the armory pursuant to the lease or the management agreement: section one hundred seventy-eight, subdivisions two and three of section one hundred eighty and section one hundred eighty-one.

(b) The provisions of section one hundred eighty-two of this article shall apply only with respect to military use of the portions of the armory not demised under the lease, and with respect to periods of civil or military emergency, and shall not apply to the operations of the armory under the lease or the management agreement.

(c) Except with respect to military use and during periods of civil or military emergency, section one hundred eighty-three of this article shall not apply to the operations of the armory pursuant to the lease or the management agreement. The following

provisions shall apply in lieu of such section one hundred eighty-three:

(i) On application of any of the associations of veterans described in paragraph b of subdivision one of such section one hundred eighty-three, the lessee or the manager pursuant to the terms of the management agreement shall provide a proper and convenient room or rooms or other appropriate space in the armory where such posts or chapters may hold regular and special meetings and organizational social events of a private nature, without the payment of any charge or expense therefor, provided that such use does not interfere with the use by the lessee or the manager pursuant to the terms of the management agreement, including any use by third parties contracted for under subparagraph (ii) of this paragraph.

(ii) The armory may be used by any person, firm, association, corporation, or municipal entity, provided that such person, firm, association or corporation enters into an agreement with the lessee or the manager pursuant to the terms of the management agreement permitting such use. The terms of any agreement entered into between the lessee or the manager pursuant to the terms of the management agreement and a user shall provide for such usage to cease during any periods of civil or military emergency.

(d) The provisions of sections one hundred eighty-five, one hundred eighty-six and one hundred eighty-seven of this article shall not apply to the armory.

(e) The management agreement and lease shall not apply to shelter use. Shelter use shall be gov-

erned by a separate agreement between the city of New York, the lessee and the state of New York; such separate agreement shall be executed prior to the execution of the lease.

§ 3. Section 1 of chapter 174 of the laws of 1968, constituting the New York state urban development corporation act, is amended by adding a new section 39 to read as follows:

§ 39. Lease and operation of seventh regiment armory. (a) The corporation is hereby authorized to act on behalf of the state and the division of military and naval affairs to enter into a lease or subsequent leases and the management agreement on behalf of the state and the division with a lessee, subsequent lessee or the manager pursuant to the terms of the management agreement in order to accomplish the purposes of this section. The leasing of the armory to a lessee or subsequent lessee and the entrance into the management agreement and the repair, restoration and refurbishment of the armory and operation thereof by a lessee or subsequent lessee for cultural and other civic uses pursuant to the lease is hereby declared to be a valid use under the city lease, and is undertaken for public purposes.

(b) The lease with a lessee or subsequent lessee authorized by this section shall require a lessee or subsequent lessee to undertake a program of repair, restoration and refurbishment of the armory and to manage and use the same as a facility for cultural and other civic uses. The lease shall demise all portions of the armory other than those reserved for a homeless shelter for women operated by the city of New York pursuant to agreement with the state and for that reserved for military use by the division.

The portion of the premises allocated to the shelter for homeless women shall be sufficient and suitable space for the current and uninterrupted operation of the shelter by the city of New York. The division shall cause the 107th corps support group or its lineal descendent to maintain military use within the reserved portions of the armory. The division, and the city of New York, respectively, shall be responsible to repair and maintain their reserved premises, including the costs of renovation and uninterrupted use, and to pay an annual common maintenance charge to a lessee or subsequent lessee to cover allocated costs of repair, maintenance and operation of the common portions of the armory. The lessee or subsequent lessee shall be required to apply all revenues generated by operations at the armory to pay or provide for costs of repairs, restoration, refurbishment, operating, maintenance and programming of the armory and the uses therein and the activities of the lessee or subsequent lessee with respect thereto.

(c) The corporation, in carrying out its authorization under this section may exercise all of the power granted it in law, as if fully enumerated herein. Without limiting the generality of the foregoing, the powers granted to the corporation under sections sixteen and twenty-two of this act shall be utilized by the corporation in its administration of the lease, and shall be applicable in respect to the repair, restoration, refurbishment and operation of the armory pursuant to the lease.

(d) In no event shall the lessee or subsequent lessee be deemed a state actor or an agent or an instrumentality of the state by reason of the lease or

this section or any of the activities of the lessee or subsequent lessee with respect to the armory pursuant to the lease or this section.

(e) Except with respect to military use or periods of civil or military emergency, for any action involving the armory that may have a significant effect on the environment, the corporation shall be the lead agency having principal responsibility for carrying out or approving such action for purposes of article eight of the environmental conservation law.

§ 4. Construction. This act, being necessary for the welfare of the state and its inhabitants, shall be liberally construed so as to effect its purposes.

§ 5. Severability clause. If any section, clause or provision of this act shall be unconstitutional or be ineffective in whole or in part, to the extent that it is not unconstitutional or ineffective it shall be valid and effective and no other section, clause or provision shall on account thereof be deemed invalid or ineffective.

§ 6. This act shall take effect immediately.

[LETTERHEAD OF 7TH REGIMENT
ARMORY CONSERVANCY RESTAURANT, LLC]

October 6, 2000

Mr. Wade Thompson
Chairman
Seventh Regiment Armory Conservancy
C/o Thor Industries
230 Park Avenue, Suite 618
New York, N.Y. 10169

Dear Mr. Thompson:

Anne Rosenzweig and Night Sky Restaurants are pleased to submit our bid in response to your Request for Proposals for restaurant and catering services at the Seventh Regiment Armory. We are confident that our model, in which the restaurant and banquet operations are combined into a single entity with both fine dining and banquet space experience, will be an effective way to provide fabulous food to visitors at the Armory.

We look forward to discussions about the details of our proposal and welcome any questions you might have concerning our experience and our commitment to this project.

Yours sincerely,

/s/ DAVID EMIL

David Emil
for Night Sky Restaurants and
Anne Rosenzweig

cc: Anne Rosenzweig

EXHIBIT I

[LETTERHEAD OF JOSEPH BAUM &
MICHAEL WHITEMAN CO., INC.]

October 4, 2000

Mr. Wade Thompson
Chairman
Seventh Regiment Armory Conservancy
C/O Thor Industries
230 Park Avenue, Suite 618
New York, NY 10169

Dear Mr. Thompson:

Joseph Baum & Michael Whiteman Co. and Tentation Potel & Chabot Caterers were pleased to submit a bid in response to your request for proposals for restaurant and catering services at the Seventh Regiment Armory. We look forward to further discussions about the range and excellence of the food services that we can provide.

Yours sincerely,

/s/ MICHAEL J. WHITEMAN

Michael J. Whiteman

EXHIBIT J

[LETTERHEAD OF RESTAURANT ASSOCIATES]

October 4, 2000

Mr. Wade Thompson
Chairman
Seventh Regiment Armory Conservancy
C/O Thor Industries
230 Park Avenue, Suite 618
New York, NY 10169

Dear Mr. Thompson:

Restaurant Associates is very pleased to submit a bid in response to your request for proposal for a restaurant and catering services at the Seventh Regiment Armory. We are looking forward to discussing the opportunities and partnership further.

Restaurant Associates has a great deal of experience in cultural centers, museums, and performing arts centers. We would truly appreciate the opportunity to apply this expertise to the armory and work to surpass all your food service expectations.

Sincerely,

/s/ Ed Sirhal

Ed Sirhal
Senior Vice President Development

EXHIBIT K

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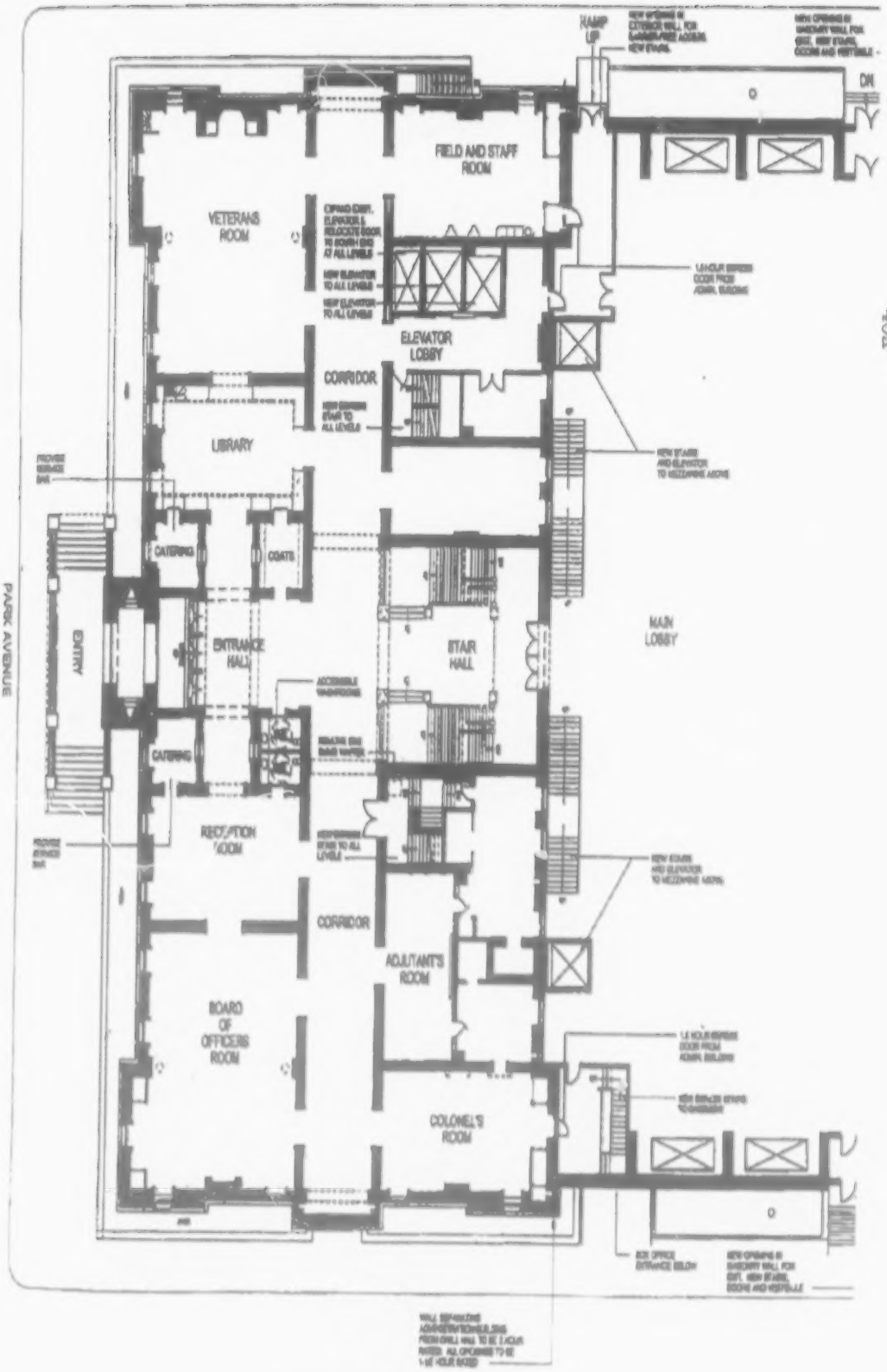

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EXHIBIT G

CORRIDOR
A
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OFFICE
DUST
RECEPTION
LOBBY
MEN
WOMEN

(Conservancy lease, exempt from Appendix 2A)

Floor	Use	Location	SF	Capacity/Specs/Notes (T= toilet, U= urinal)
First Floor				
Administration Building First Floor				
	Restaurant			
	Dining Room	Board of Officers	1,780	capacity: 88 seated
	Dining Room	Reception Room	850	capacity: 36 seated
	Dining Room	Colonel's Room	920	capacity: 36 seated
	Dining Room	Adjutant's Room	646	capacity: 28 seated
	Bar	South Hallway	1,600	
	Sub-total		5,796	
	Restaurant Back of House and Patron Facilities			
	Kitchen		1,180	
	Ladies Room (ADA)		120	1T
	Mens Room (ADA)		120	1T
	Cost Check		130	
	Sub-total		1,550	
	Public Rooms			
	Reception Rm	Veterans Room	1,750	capacity: 145 standing
	Reception Rm	Library	845	capacity: 70 standing
	Reception Rm	Field and Staff	920	capacity: 76 standing
	Sub-total		3,515	
	Public Rooms Back of House			
	Prep Room	Equipment Room	529	
	Storage		200	
	Sub-total		729	
	Patron Facilities			
	Lobby		1,610	
	Box office storage	Inner Committee	200	
	Elevator & lobby	Outer Committee	160	
	Sub-total		1,970	
	Other			
	Mechanical		50	
	Stairs	North End	195	
		South End	250	
	Elevator		285	
	Sub-Total		780	
	TOTAL First Floor NSF	Administration Building	14,340	
	TOTAL Actual GSF	Administration Building	18,726	

EXHIBIT H

Floor	Use	Location	SF	Capacity/Specs/Notes (T= toilet, U= urinal)
Second Floor - Administration Building				
	Corporate Entertaining			
	Corporate Rms	12 Company Rms	10,094	capacity: 30 sq. standing
	Food prep		590	
	Sub-total		10,684	
	Patron Facilities			
	Men's Room		210	2T/3U
	Ladies Room		400	6T
	Lobby	Hall	3,671	capacity: 306 standing
	Sub-total		4,281	
	Other			
	Mechanical		114	
	Stairs	North End	195	
		South End	220	
	Elevator		200	
	Sub-total		729	
	TOTAL Second Floor NSF	Administration Building	15,694	
	TOTAL Actual GSF	Administration Building	18,726	
Second Mezzanine - Administration Building				
	Gallery Offices		1,015	
	Gallery Storage		750	
	Mechanical		103	
	Stairs		421	
	Elevator		200	
	TOTAL Second Mezzanine	Administration Building	2,489	
	TOTAL Actual GSF	Administration Building	2,742	
Third Floor - Administration Building				
	Galleries		10,080	
	Offices/Storage/Other		3,594	
	Concessions		550	
	Ladies Room		215	6T
	Mens Room		217	2T/3U
	Lounge		400	
	Coat Room		60	
	Lobby	Hall	165	
	Mechanical		109	
	Stairs	North End	196	
		South End	231	
	Elevator		200	
	TOTAL 3rd Floor NSF	Administration Building	16,017	
	TOTAL Actual GSF	Administration Building	18,726	

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